

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTIAN SARCUNI, et al., on
behalf of themselves and other
similarly situated,

Plaintiffs,

v.

bZx DAO, et al.,

Defendants.

Case No.: 22-cv-618-LAB-DEB

ORDER:

- 1) DENYING IN PART AND
GRANTING IN PART MOTION
TO DISMISS, [Dkt. 27];**
- 2) DENYING MOTION TO
STRIKE, [Dkt. 27]; and**
- 3) DENYING MOTION TO
DISMISS, [Dkt. 31]**

In what appears to be a case of first impression, nineteen named Plaintiffs brought this putative class action against Kyle Kistner, Tom Bean, bZeroX LLC, Leveragebox LLC (collectively, the “Leveragebox Defendants”), Hashed International LLC, and AGE Crypto GP, LLC (the “Hashed Defendants,” and, together with the Leveragebox Defendants, “Defendants”) as members of a general partnership for one count of negligence. (Dkt. 21, First Amended Complaint (“FAC”)). Plaintiffs allege that each Defendant is a general partner of the bZx DAO, a purported “Decentralized Autonomous Organization.” The FAC

1 also names the bZx DAO and its successor, the Ooki DAO, as Defendants.
 2 Plaintiffs allege they were injured by Defendants' negligence after a developer
 3 working for the bZx DAO was successfully targeted by a phishing attack which led
 4 to the theft of \$55 million in cryptocurrency. (*Id.* ¶ 1). The named Plaintiffs lost
 5 \$1.7 million. (*Id.*).

6 The Leveragebox Defendants move to dismiss the FAC for failure to state a
 7 claim, lack of personal jurisdiction, and to strike the FAC's class allegations (the
 8 "Leveragebox Motion"). (Dkt. 27). The Hashed Defendants join the Leveragebox
 9 Motion and separately move to dismiss the FAC for failure to state a claim,
 10 insufficient service, and lack of subject matter jurisdiction (the "Hashed Motion").

11 Having considered the parties' submissions and the relevant law, the Court
12 GRANTS IN PART and **DENIES IN PART** the Leveragebox Motion, (Dkt. 27), and
13 DENIES the Hashed Motion, (Dkt. 31). The claims against Tom Bean, bZeroX
 14 LLC, and Leveragebox LLC are **DISMISSED WITHOUT PREJUDICE**.

15 I. BACKGROUND

16 According to the FAC, the bZx DAO operated a blockchain-based software
 17 called the bZx Protocol, which offered cryptocurrency margin trading and lending
 18 products. (FAC ¶¶ 42–44, 68, 71). In order to understand the nature of the bZx
 19 DAO and FAC's allegations, a brief overview of cryptocurrency and the technology
 20 underlying that asset class is necessary. A cryptocurrency is a digital asset based
 21 on a network that is distributed across a large number of computers. (*Id.* ¶ 35).
 22 This decentralized computer network securely and publicly records all
 23 transactions for a given cryptocurrency on a distributed ledger called a blockchain.
 24 (*Id.* ¶ 37). Some blockchains can record transactions for multiple
 25 cryptocurrencies. (*Id.*). The blockchains at issue in this case are Ethereum,
 26 Polygon, and the Binance Smart Chain ("BSC"). (*Id.*).

27 An individual unit of a given cryptocurrency is called a token. (*Id.* ¶ 38).
 28 Tokens are fungible and tradeable. (*Id.*). The value of many cryptocurrencies

1 fluctuates relative to the U.S. Dollar (or other currency), similar to how the price of
2 a traditional commodity might fluctuate. (*Id.* ¶ 35). Some cryptocurrencies, like
3 Bitcoin or Ether, can be used to purchase goods or services and are also bought,
4 sold, and held for their value. (*Id.* ¶¶ 35, 37). Other cryptocurrencies take
5 advantage of the blockchain's distributed ledger to perform functions such as
6 recording votes. (*Id.* ¶ 41). Cryptocurrency tokens are stored in a digital wallet,
7 which can be accessed with a unique password. (*Id.* ¶ 39).

8 As the cryptocurrency industry expanded, new decentralized finance, or
9 "DeFi," applications developed that allow users to engage in increasingly complex
10 transactions without having to interact with traditional banks or other regulated
11 entities. (*Id.* ¶ 40). One possible method for governing a DeFi protocol is through
12 a Decentralized Autonomous Organization ("DAO"). (*Id.* ¶ 41). DAOs don't
13 typically take on a formal corporate structure, opting instead to distribute
14 governance rights among persons who hold a specific governance token. (*Id.*).
15 Tokenholders can propose and vote on actions for the affiliated DAO to take. (*Id.*).
16 If a proposal receives the required number of votes, the DAO adopts the proposal.
17 (*Id.*).

18 At issue in this case is a DeFi application called the bZx Protocol. (*Id.* ¶ 42).
19 The bZx Protocol is "a protocol for tokenized margin trading and lending." (*Id.*).
20 Essentially, the bZx Protocol enables margin trading and lending in various
21 cryptocurrencies instead with a traditional fiat currency and traditional securities.
22 (*Id.* ¶ 43). The bZx Protocol offers two products: Fulcrum, which allows margin
23 lending and trading, and Torque, which allows users to make loans with fixed
24 interest rates. (*Id.* ¶¶ 43–44). The bZx Protocol supports three blockchains:
25 Ethereum, Polygon, and BSC. (*Id.* ¶ 45). To use the bZx Protocol, a user selects
26 which blockchain network to use and then connects a wallet to deposit
27 cryptocurrency tokens. (*Id.*). The bZx Protocol claims to be "non-custodial"
28 because users maintain control over their own passwords and digital assets. (*Id.*

¶ 46). The bZx Protocol's website contains numerous claims about the Protocol's security. (*Id.* ¶¶ 46, 48–50). bZx Protocol developers used private keys which allowed the developer to access all of the assets recorded on two of the three compatible blockchains—Polygon and BSC. (*Id.* ¶¶ 47, 54).

When the bZx Protocol was first created, it was controlled by bZeroX LLC, an LLC co-founded and controlled by Defendants Tom Bean and Kyle Kistner. (*Id.* ¶ 67). The Fulcrum and Torque products were operated by Leveragebox LLC, which was also co-founded and controlled by Bean and Kistner. (*Id.*). In August 2021, the bZx Protocol announced plans to transition control of the Protocol from bZeroX LLC to the bZx DAO, a DAO controlled by real and legal persons holding BZRX tokens—a cryptocurrency issued by the DAO. (*Id.* ¶¶ 68–69). In a public call describing the pending transition, Kistner stated:

It's really exciting. We're going to be really preparing for the new regulatory environment by ensuring bZx is future-proof. So many people across the [cryptocurrency] industry right now are getting legal notices and lawmakers are trying to decide whether they want DeFi companies to register as virtual asset service providers or not—and really what we're going to do is take all the steps possible to make sure that when regulators ask us to comply, that we have nothing we can really do because we've given it all to the community.

In re bZeroX, LLC, CFTC No. 22-31, 2022 WL 4597664, at *4 (Sept. 22, 2022).¹

¹ The Court takes judicial notice of the Commodity Future Trading Commission's ("CFTC") Order Instituting Proceedings in *In re bZeroX, LLC; Tom Bean; and Kyle Kistner*, CFTC No. 22-31, 2022 WL 4597664 (Sept. 22, 2022). In ruling on a Rule 12(b)(6) motion, courts may consider relevant matters subject to judicial notice. See *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). A court may "judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Proper subjects of judicial notice

1 When the transfer of control was completed in August 2021, bZeroX LLC
 2 transferred all of its assets to the bZx DAO and dissolved. (FAC ¶ 68). At that
 3 time, the bZx Protocol held \$80 million in assets and the bZx DAO was charged
 4 with “maintaining the protocol, building new products, marketing the brand, and
 5 managing the community.” (*Id.*). From that point forward, the bZx DAO and
 6 Protocol were controlled by BZRX tokenholders, who became “the main drivers of
 7 governance and decision making of the bZx platform.” (*Id.* ¶ 69). Tokenholders
 8 can suggest and vote on governance proposals which, if adopted, are
 9 implemented by the bZx Protocol. (*Id.*).

10 On or about November 5, 2021, an unknown hacker sent a phishing email
 11 to a bZx Protocol developer’s personal computer.² (*Id.* ¶ 52). The email appeared
 12 legitimate and included a Word document containing hidden malicious software.
 13 (*Id.*) Once the Word document was opened, the hacker was able to access the
 14 developer’s personal digital wallet, which in turn provided access to the
 15 developer’s private key. (*Id.* ¶ 54). Once the hacker obtained the private key, he
 16 or she was able to transfer all cryptocurrencies held on the Polygon and BSC
 17 blockchains out of the bZx Protocol. (*Id.*). The Ethereum blockchain wasn’t
 18 impacted by the hack because the bZx Protocol had finished implementing certain
 19 security protocols. (*Id.* ¶ 59). As a result of the hack, users lost approximately \$55
 20 million worth of cryptocurrency tokens. (*Id.* ¶ 55). This wasn’t the first time the bZx
 21 Protocol was hacked—in 2020 the Protocol was targeted by three hacks with
 22 losses of approximately \$9 million, at least one of which involved a phishing

24 include administrative materials. See, e.g., *Barron v. Reich*, 13 F.3d 1370, 1377
 25 (9th Cir.1994). The CFTC Order Instituting Proceedings is an administrative
 material properly subject to judicial notice.

26 ² A phishing attack occurs when a bad actor sends the target a digital message
 27 containing malicious content. (FAC ¶ 53). Once opened, a phishing message can
 28 allow a bad actor to install malware on the target’s device or capture sensitive
 information from the target’s device. (*Id.*).

1 attack. (*Id.* ¶ 61).

2 On November 21, 2021, the bZx DAO approved a compensation plan for
3 those impacted by the hack. (*Id.* ¶ 63). The plan compensated anyone who lost
4 BZRX tokens by providing replacement BZRX tokens or BZRX tokens that would
5 vest over time. (*Id.* ¶ 64). The compensation plan also provided “debt tokens”
6 which will gradually be repurchased to make victims whole. (*Id.* ¶ 65). The FAC
7 alleges complete repayment will take thousands of years. (*Id.*).

8 In December 2021, the bZx Protocol encouraged users to transfer to a
9 successor platform called the Ooki Protocol. (*Id.* ¶ 66). The Ooki Protocol is
10 controlled in the same manner as the bZx Protocol, except the controlling DAO is
11 called the Ooki DAO and the governance tokens are called OOKI tokens. (*Id.*).
12 Many BZRX tokenholders transferred their tokens for OOKI tokens. (*Id.*) While
13 bZx, Fulcrum, and Torque still exist, it is undisputed that the Ooki DAO is the direct
14 successor to the bZx DAO. (*Id.*).

15 Plaintiffs are nineteen non-citizen bZx Protocol users who individually lost
16 between \$800 and \$450,000 in the hack, and collectively lost \$1.7 million. (*Id.*
17 ¶¶ 1, 3–21). Plaintiffs initiated this putative class action on May 2, 2022, (Dkt. 1),
18 and filed their FAC on June 27, 2022, (Dkt. 21, FAC). The Leveragebox
19 Defendants moved to dismiss the FAC in its entirety on July 18, 2022, (Dkt. 27),
20 and the Hashed Defendants moved to dismiss the FAC on July 29, 2022,
21 (Dkt. 31).

22 II. RULE 12(b)(6) MOTION TO DISMISS

23 A. Legal Standard

24 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint.
25 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “To survive a motion to
26 dismiss, a complaint must contain sufficient factual matter, accepted as true, to
27 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662,
28 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). A claim

1 is plausible if the factual allegations supporting it permit “the court to draw the
 2 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*
 3 The factual allegations need not be detailed; instead, the plaintiff must plead
 4 sufficient facts that, if true, “raise a right to relief above the speculative level.”
 5 *Twombly*, 550 U.S. at 545. The plausibility standard isn’t a “probability
 6 requirement,’ but it asks for more than a sheer possibility that a defendant has
 7 acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556).
 8 Courts aren’t required to accept legal conclusions couched as factual allegations
 9 and “formulaic recitation[s] of the elements of a cause of action” aren’t sufficient.
 10 *Twombly*, 550 U.S. at 555. The Court accepts as true all facts alleged in the
 11 complaint and draws all reasonable inferences in favor of the plaintiff. *al-Kidd v.*
 12 *Ashcroft*, 580 F.3d 949, 956 (9th Cir. 2009). Ultimately, a court must determine
 13 whether the plaintiff’s alleged facts, if proven, permit the court to grant the
 14 requested relief. See *Iqbal*, 556 U.S. at 666; Fed. R. Civ. P. 8(a)(2).

15 **B. Negligence Claim**

16 “In order to establish negligence under California law, a plaintiff must
 17 establish four required elements: (1) duty; (2) breach; (3) causation; and
 18 (4) damages.” *Illetto v. Glock Inc.*, 349 F.3d 1191, 1203 (9th Cir. 2003) (citing
 19 *Martinez v. Pacific Bell*, 225 Cal. App. 3d 1557, 1564 (1990)). The Leveragebox
 20 Defendants argue the FAC fails to allege facts sufficient to establish the duty and
 21 breach elements of a negligence claim. (Dkt. 27-1 at 12–18).

22 1. Duty

23 “In California, the ‘general rule’ is that people owe a duty of care to avoid
 24 causing harm to others and that they are thus usually liable for injuries their
 25 negligence inflicts.” *S. Cal. Gas Leak Cases*, 7 Cal. 5th 391, 398 (2019). However,
 26 “liability in negligence for purely economic losses . . . is ‘the exception, not the
 27 rule.’” *Id.* at 400. “The primary exception to the general rule of no-recovery for
 28 negligently inflicted purely economic losses is where the plaintiff and the

1 defendant have a ‘special relationship.’” *Id.* The parties here agree that courts
 2 consider six factors to determine whether a special relationship exists:

- 3 (i) “the extent to which the transaction was intended to
 affect the plaintiff,” . . . (ii) “the foreseeability of harm to the
 plaintiff,” (iii) “the degree of certainty that the plaintiff
 suffered injury,” (iv) “the closeness of the connection
 between the defendant’s conduct and the injury suffered,”
 (v) “the moral blame attached to the defendant’s conduct,”
 and (vi) “the policy of preventing future harm.”

8 *Id.* at 401 (quoting *J’Aire Corp. v. Gregory*, 24 Cal. 3d 799, 804 (1979)); see also
 9 *Rowland v. Christian*, 69 Cal. 2d 108, 113 (1968) (articulating an earlier version
 10 of the factors).

11 The FAC alleges that the “bZx protocol and its partners owed Plaintiffs a
 12 duty to maintain the security of the funds deposited using the bZx protocol,
 13 including but not limited to putting in place procedures such that a phishing attack
 14 on a single developer would not result in a multi-million dollar theft.” (FAC ¶ 99).
 15 Plaintiffs allege that the creators of the bZx Protocol “told users that they need not
 16 ‘ever worry about . . . getting hacked or [anyone] stealing [their] funds.’” (*Id.* ¶ 1).
 17 The FAC further alleges that the “bZx protocol and its partners also owed Plaintiffs
 18 a duty to supervise developers and those working on the protocol such that
 19 important passwords or security details could not be revealed through the actions
 20 of a single developer.” (*Id.* ¶ 100). Finally, the FAC alleges that the developer
 21 targeted by the phishing attack “owed Plaintiffs a duty to secure [passwords]
 22 against malicious attacks.” (*Id.* ¶ 101).

23 In *Fabian v. LeMahieu*, No. 19-CV-54-YGR, 2019 WL 4918431 (N.D. Cal.
 24 Oct. 4, 2019), the Court considered a claim of negligence based on similar facts.
 25 The plaintiffs alleged that cryptocurrency had been stolen from the defendant’s
 26 exchange due to “unauthorized transactions.” *Id.* at *5. In denying a motion to
 27 dismiss, the court applied the six-factor special relationship test and found the
 28 defendant owed plaintiffs a duty of care:

1 Here, five of the six factors weigh in favor of finding a duty.
 2 It was foreseeable that a lack of security on the primary
 3 exchange for [the cryptocurrency] would cause harm to
 4 individuals who, like plaintiff, deposited their
 5 [cryptocurrency] on that exchange and that any security
 6 failure on that exchange would result in harm to plaintiff and
 7 other similarly situated individuals. Further, it is plausible
 8 that [the defendants'] alleged conduct, if true, could be
 9 viewed as morally reprehensible and this type of action
 10 could further the goal of preventing future harm. Imposing
 a duty to exercise care in this instance will not result in an
 undue burden on the [defendants] or the industry at large.
 Moreover, [the defendants'] conduct was proximately
 connected to plaintiff's injury.

11 *Id.* at *12 (citing *Rowland*, 69 Cal. 2d 108).

12 Applying the special relationship factors here counsels in favor of finding
 13 Defendants owed Plaintiffs a duty of care. First, Plaintiffs were the intended
 14 beneficiaries of the transaction in that they were the bZx Protocol's users. The
 15 FAC alleges that the bZx Protocol is a platform for "tokenized margin trading and
 16 lending," (FAC ¶ 42), which Plaintiffs traded on after connecting a wallet and
 17 depositing a supported cryptocurrency, (*id.* ¶ 45). Second, it was foreseeable that
 18 lack of security on the bZx Protocol would cause harm to individuals, like Plaintiffs,
 19 who used the BSC and Polygon blockchains on the platform. This conclusion is
 20 bolstered by the allegation that bZx was targeted by three previous hacks with
 21 initial losses of approximately \$9 million, at least one of which involved a phishing
 22 attack. (*Id.* ¶ 61). Third, Plaintiffs allege an injury with a high degree of certainty:
 23 the named Plaintiffs were injured by the theft of approximately \$1.7 million of their
 24 cryptocurrency tokens, while the total theft was approximately \$55 million. (*Id.*
 25 ¶¶ 1, 3–21). Fourth, Plaintiffs allege a close connection between the negligent
 26 conduct and their injury: but for the bZx DAO's negligent failure to implement
 27 security measures that the operators knew were reasonably necessary to protect
 28 the Protocol, Plaintiffs' cryptocurrency would have been safe. (See *id.* ¶ 1). Fifth,

1 Plaintiffs allege the DAO's conduct is morally reprehensible in light of their
 2 promises of safety. (See *id.* ¶ 1). Sixth, a finding that Defendants owed Plaintiffs
 3 a duty furthers the policy of preventing future harm stemming from negligent
 4 oversight of security measures on DeFi protocols. See *Fabian*, 2019 WL 4918431,
 5 at *12 (applying six-factor test). The factors weigh in favor of finding a special
 6 relationship between the bZx DAO and Plaintiffs. Accordingly, the Court finds that
 7 Plaintiffs have alleged that the bZx DAO had a duty to exercise reasonable care
 8 with respect to their management of the protocol.

9 This conclusion isn't disturbed by the Leveragebox Defendants' arguments
 10 that *Fabian* is distinguishable. (Dkt. 43 at 3–4). First, the Leveragebox
 11 Defendants' attempt to distinguish *Fabian* because transactions with the bZx
 12 Protocol are "non-custodial" because users maintain custody over their own
 13 assets. (*Id.* at 3). The FAC alleges a successful phishing attack on a bZx
 14 developer allowed a hacker to gain access to all of the funds supposedly in
 15 Plaintiffs' custody, (FAC ¶¶ 47, 52, 54, 56–57), rendering the distinction between
 16 custodial and non-custodial meaningless here. Second, the Leveragebox
 17 Defendants argue the FAC doesn't allege transactions between Plaintiffs and
 18 Defendants. (Dkt. 43 at 3–4). The FAC does, however, allege transactions
 19 between the named Plaintiffs and the bZx Protocol that were precisely the sort of
 20 transactions Fulcrum was intended to facilitate. (FAC ¶ 1).

21 2. Breach

22 The Leveragebox Defendants next contend that, even if they owed Plaintiffs
 23 a duty of care, the FAC doesn't allege facts plausibly stating that Defendants
 24 breached that duty. (Dkt. 27-1 at 17–18). Citing this Court's order in *Razuki v.*
 25 *Caliber Home Loans, Inc.*, No. 17-cv-1718-LAB-WVG, 2018 WL 6018361, at *1
 26 (S.D. Cal. Nov. 15, 2018), Defendants argue Plaintiffs can't state a claim by
 27 "simply asserting that a hack occurred, and therefore people were negligent."
 28 (Dkt. 27-1 at 17–18). However, Plaintiffs allege breach with more specificity than

1 the complaint in *Razuki*. While the complaint in *Razuki* offered conclusory
 2 statements without supporting facts, see 2018 WL 6018361, at *1, Plaintiffs here
 3 allege sufficient factual matter to support their claim.

4 The FAC alleges that on November 5, 2021, “[a] bZx developer was sent a
 5 phishing email to his personal computer with a malicious macro in a Word
 6 document that was disguised as a legitimate email attachment, which then ran a
 7 script on his Personal Computer. This led to his personal mnemonic wallet phrase
 8 being compromised.” (FAC ¶ 52). The developer’s personal wallet contained
 9 “private keys (or passcodes or passphrases) that enabled [the hacker to access
 10 bZx Protocol] users’ funds” and that “those keys were [the developer’s] only
 11 means of accessing the protocol and making necessary changes to it.” (*Id.* ¶ 56).
 12 The FAC further alleges that these private keys had been used to successfully
 13 target the Protocol in other, similar hacks, (*id.* ¶ 61); the bZx Protocol made
 14 specific assurances about security, (*id.* ¶¶ 46, 48–50); and the Protocol failed to
 15 implement security measures that would’ve prevented Plaintiffs’ injuries, (*id.*
 16 ¶¶ 54, 57–59, 61; *see also id.* ¶ 57 (“The problem, as the company reported it,
 17 was that—despite the protocol’s promises to the contrary—the protocol’s
 18 implementation on two of the three blockchains on which it operated was insecure.
 19 That is, the protocol was designed to work on the Ethereum blockchain, the
 20 Polygon blockchain, and the Binance Smart Chain blockchain, but only its
 21 operations on the Ethereum blockchain were secure.”)). Accepting the allegations
 22 in the FAC as true, the Court finds that Plaintiffs have stated sufficient factual
 23 matter to plausibly allege Defendants breached their duty care.

24 C. Partnership Liability

25 Plaintiffs’ theory of liability is premised on the existence of a general
 26 partnership among all persons holding BZRX tokens. The FAC contends
 27 Defendants are partners of the purported bZx DAO general partnership, (FAC
 28 ¶¶ 22–25, 72–75), and, therefore, jointly and severally liable for Plaintiffs’ injuries,

1 (id. ¶¶ 99–102). The Leveragebox Defendants argue the FAC fails to plausibly
 2 demonstrate the existence of a general partnership. (Dkt. 27-1 at 18–22).
 3 Additionally, they argue the FAC doesn't sufficiently allege Defendants are
 4 members of the purported general partnership. (*Id.* at 22).

5 The Court first considers whether the FAC includes sufficient factual matter
 6 to plausibly allege that the bZx DAO is a general partnership, and then considers
 7 whether the FAC sufficiently alleges that each Defendant is a partner in such a
 8 partnership.

9 1. **bZx DAO General Partnership Formation**

10 California law provides that the “association of two or more persons to carry
 11 on as coowners a business for profit forms a partnership, whether or not the
 12 persons intend to form a partnership.” Cal. Corp. Code § 16202(a). “Under the
 13 Corporations Code, unless persons associated to do business together establish
 14 a formal entity like a corporation, the association is deemed to be a partnership
 15 regardless of the parties’ intent.” *Jones v. Goodman*, 57 Cal. App. 5th 521, 538
 16 n.19 (2020); see also § 16202(b) (“[A]n association formed under a statute other
 17 than this chapter, a predecessor statute, or a comparable statute of another
 18 jurisdiction is not a partnership under this chapter.”). “[P]ersons may
 19 unintentionally create a partnership where their actions and behavior demonstrate
 20 an intent to engage in business together.” *In re Marriage of Geraci*, 144 Cal. App.
 21 4th 1278, 1292 (2006) (noting that courts consider the surrounding circumstances
 22 to determine the parties’ intent). “It is well-settled that the existence of a
 23 partnership is a question of fact.” *Persson v. Smart Inventions, Inc.*, 125 Cal. App.
 24 4th 1141, 1157 (2005) (citing *Holmes v. Lerner*, 74 Cal. App. 4th 442, 445 (1999)).

25 A plaintiff can plead the existence of a partnership by making specific factual
 26 allegations demonstrating: (1) the right of the purported partners to participate in
 27 the management of the business; (2) the sharing of profits and losses among the
 28 purported partners; and (3) contributions of money, property, or services by the

1 purported partners to the partnership. See *Ramirez v. Sotelo*, No. ED CV 13-2155
 2 SJO (MRWx), 2014 WL 12586445, at *3 (C.D. Cal. May 8, 2014). “To participate
 3 to some extent in the management of a business is a primary element in
 4 partnership organization, and it is virtually essential to a determination that such
 5 a relationship existed.” *Dickenson v. Samples*, 104 Cal. App. 2d 311, 315 (1951).
 6 Importantly, “the distinguishing feature of partnership is association to carry on
 7 business together, not [an] agreement to share profits.” *Holmes*, 74 Cal. App. 4th
 8 at 454 (noting that the California legislature removed profit sharing from the
 9 statutory definition of a partnership, indicating that the legislature “intend[ed] profit
 10 sharing to be evidence of a partnership, rather than a required element of the
 11 definition of a partnership”); see also *id.* at 456 (“Ordinarily the existence of a
 12 partnership is evidenced by the right of the respective parties to participate in
 13 profits and losses and in the management and control of the business.”); Cal.
 14 Corp. Code § 16202(c)(3) (“A person who receives a share of the profits of a
 15 business is presumed to be a partner in the business.”).

16 The FAC alleges that “the bZx protocol purports to be a DAO, a
 17 de-centralized autonomous organization, that lacks any legal formalities or
 18 recognition.” (FAC ¶ 2). Plaintiffs allege that “[g]iven their structures and the way
 19 they operate, the bZx and Ooki DAOs are general partnerships among
 20 tokenholders.” (*Id.* ¶ 71). Plaintiffs contend the DAOs should be recognized as
 21 general partnerships, and each partner should be jointly and severally liable for
 22 the torts of the DAO. (*Id.* ¶ 2) The Leveragebox Defendants contend that the FAC
 23 asserts legal conclusions and fails to allege facts sufficient to demonstrate the
 24 existence of general partnership. (Dkt. 27-1 at 18–23).

25 To plausibly allege the existence of a general partnership, the FAC must
 26 plead sufficient facts to demonstrate that the bZx DAO is (1) an association of two
 27 or more persons (2) carrying on as co-owners of (3) a business for profit. See Cal.
 28 Corp. Code § 16202(a). As a starting point, the FAC alleges that the DAO is an

1 “association[] of two or more persons (the tokenholders and investors).” (FAC
 2 ¶ 71). The FAC also alleges that the bZx DAO generates profits through its margin
 3 trading and lending products, Fulcrum and Torque. (*Id.* ¶¶ 43–44, 71). The
 4 Leveragebox Defendants don’t appear to dispute either allegation. (See Dkt. 27-1
 5 at 18–23). The Court finds that the FAC sufficiently alleges that the DAO is an
 6 association of two or more persons and that it operates as a business for profit.

7 The Court next considers whether Plaintiffs sufficiently allege that the BZRX
 8 tokenholders carry on as co-owners of the DAO. See Cal. Corp. Code § 16202(a).
 9 The FAC alleges that “bZx outlined plans to transition both revenue from the
 10 protocol and control of aspects of the protocol to the bZx DAO. That is, ‘armed
 11 with tens of millions of dollars, [the DAO] will take up the task of maintaining the
 12 protocol, building new products, marketing the brand, and managing the
 13 community.’” (FAC ¶ 68). Plaintiffs allege that “when the transition was completed,
 14 ‘the legal entity bZeroX LLC [ceased] to exist, and in its place the DAO . . .
 15 remained.” (*Id.*).

16 The FAC alleges the “bZx DAO is controlled by those who hold the BZRX
 17 token” and that tokenholders have governance rights in the DAO. (FAC ¶¶ 41,
 18 69). “That is, ‘the keys to the bZx treasury, [were] turned over to the DAO, and
 19 [BZRX] tokenholders [became] the main drivers of governance and decision
 20 making of the bZx platform going forward.’” (*Id.* ¶ 69). Specifically, they allege that
 21 tokenholders can both suggest and vote on governance proposals. (*Id.* ¶¶ 41, 69).
 22 Tokenholders can propose “spending treasury funds to hire people; changing
 23 organizational goals and policies; and even distributing treasury assets to
 24 tokenholders, like how corporations can authorize dividends.” (*Id.*). If a proposal
 25 receives the required number of votes, the DAO or Protocol will take the proposed
 26 action. (*Id.* ¶ 41).

27 The Leveragebox Defendants concede that BZRX tokenholders possess
 28 some governance rights, but argue these rights are too limited to establish the

1 existence of a general partnership. (Dkt. 27-1 at 22 (“BZRX tokens provide owners
 2 only some fraction of governance rights which relate to only a narrow set of
 3 parameters of the protocol.”)). But limited governance rights don’t divest a
 4 partnership of its essential nature—a partnership can still exist when individual
 5 partners only control a part of the enterprise. See *Singleton v. Fuller*, 118 Cal.
 6 App. 2d 733, 741 (1953) (“The fact that no complete control of any part of a
 7 partnership venture is vested in each partner does not [negate] the existence of a
 8 partnership since, by agreement, one partner may be given the duty of
 9 management of the enterprise or any part thereof.”). The Court finds the FAC
 10 plausibly alleges that the BZRX tokenholders possessed governance rights over
 11 the DAO.

12 Plaintiffs also allege that tokenholders can share in the DAO’s profits. (FAC
 13 ¶ 41). The Leveragebox Defendants dispute this characterization, arguing the
 14 FAC doesn’t sufficiently allege the existence of profit and loss sharing. (See
 15 Dkt. 27-1 at 20–21). They contend that Plaintiffs merely “speculat[e] that BZRX
 16 token holders *could* share profits,” but that this allegation “fall[s] far short of
 17 alleging that the [tokenholders] *agreed* to share profits and losses.” (*Id.* at 21
 18 (emphasis in original)). “The actual sharing of profits . . . is *prima facie* evidence,
 19 which is to be considered, in light of any other evidence, when determining if a
 20 partnership exists.” *Holmes*, 74 Cal. App. 4th at 457; see also *Nelson v. Abraham*,
 21 29 Cal. 2d 745, 749 (1947) (“A partnership connotes coownership in the
 22 partnership property with a sharing in the profits and losses of a continuing
 23 business.”). “The fact, however, that profits and losses are not shared equally
 24 does not necessarily compel a conclusion that no partnership existed.” *Constans*
 25 *v. Ross*, 106 Cal. App. 2d 381, 389 (1951).

26 Here, the FAC alleges that tokenholders “can vote to “distribut[e] treasury
 27 assets to tokenholders, like how corporations can authorize dividends.” (FAC
 28 ¶ 41). Also relevant here is the Commodity Future Trading Commission’s

1 (“CFTC”) Order Instituting Proceedings, which the Court has already judicially
 2 noticed. The CFTC found that the “bZx Protocol liquidity pool[’s] . . . assets were
 3 supplied by liquidity providers who, in exchange, had received interest-generating
 4 tokens, as well as BZRX Protocol Tokens (‘BZRX Tokens’) conferring voting rights
 5 on certain matters relevant to bZx Protocol governance.” *In re bZeroX, LLC*, 2022
 6 WL 4597664, at *2. The CFTC’s findings reinforce the FAC’s allegations that
 7 tokenholders can share in the DAO’s profits either by voting to distribute treasury
 8 assets among themselves or via an interest-generating token.

9 The Leveragebox Defendants argue that Plaintiffs “allege no facts
 10 suggesting that defendants (let alone all BZRX token holders) agreed to bear any
 11 and all losses suffered by a partnership.” (*Id.*). However, “[a]n agreement to divide
 12 profits implies an agreement for a corresponding division of losses, unless
 13 otherwise expressly stipulated.” *Nat'l Bank of Com. in Pasadena v. Thompson
 14 Advert. Co.*, 114 Cal. App. 327, 329–30 (1931) (citations omitted); *see also Brown
 15 v. Fairbanks*, 121 Cal. App. 2d 432, 440 (1953) (“A provision to share losses may
 16 be implied in a partnership or joint venture agreement.”). On balance, the Court
 17 finds the allegation that BZRX tokenholders may share profits weighs in favor of
 18 treating the DAO as a general partnership.³

19 The Leveragebox Defendants further argue that finding “that each and every
 20 BZRX token holder plausibly could be a co-owner of a business with management
 21

22 ³ The CFTC Order Instituting Proceedings indicates one way to obtain BZRX
 23 tokens was to invest in the bZx Protocol, supporting the reasonable inference that
 24 tokenholders made contributions to the DAO. See *In re bZeroX, LLC*, 2022 WL
 25 4597664, at *2 (describing the “bZx Protocol liquidity pool, whose assets were
 26 supplied by liquidity providers who, in exchange, had received interest-generating
 27 tokens, as well as [BZRX Tokens] conferring voting rights on certain matters
 28 relevant to bZx Protocol governance”). Such contributions support treating the
 DAO as a general partnership. See *Ramirez*, 2014 WL 12586445, at *3 (noting
 contributions of money, property, or services to the partnership by the purported
 partners supports the existence of a general partnership).

1 authority and unlimited personal liability for any losses connected to the platform,
 2 and thus subject to full discovery into their potential liability . . . [would be a] radical
 3 expansion and alteration of long-standing principles of partnership law [and]
 4 should not be countenanced.” (Dkt. 27-1 at 22–23). However, when transitioning
 5 control of the bZx Protocol from bZerox LLC to the bZx DAO, the partners elected
 6 to forgo registering the DAO as an LLC or other legal entity with limited liability. In
 7 fact, the CFTC concluded that “Bean and Kistner determined that transitioning to
 8 a DAO would insulate the bZx Protocol from regulatory oversight and
 9 accountability for compliance with U.S. law.” *In re bZeroX, LLC*, 2022 WL
 10 4597664, at *4. In a public call describing the pending transition, Kistner stated:

11 It’s really exciting. We’re going to be really preparing for the
 12 new regulatory environment by ensuring bZx is
 13 future-proof. So many people across the [cryptocurrency]
 14 industry right now are getting legal notices and lawmakers
 15 are trying to decide whether they want DeFi companies to
 16 register as virtual asset service providers or not—and
 17 really what we’re going to do is take all the steps possible
 18 to make sure that when regulators ask us to comply, that
 19 we have nothing we can really do because we’ve given it
 20 all to the community.

21 *Id.* Given this context, the Court disagrees that recognizing the bZx DAO as a
 22 general partnership would be a “radical expansion and alteration of long-standing
 23 principles of partnership law [that] should not be countenanced.” (Dkt. 27-1
 24 at 22–23); see also *Nat'l Bank of Com.*, 114 Cal. App. at 329–30 (“Courts do not
 25 countenance partnerships which attempt to afford all the advantages of
 26 commercial intercourse without corresponding liabilities, and an agreement which
 27 contemplates such evasion will be construed and enforced as a general
 28 partnership.”).

29 Accepting the allegations in the FAC as true, the Court finds that Plaintiffs
 30 have stated facts sufficient to allege that a general partnership existed among the
 31 BZRX tokenholders.

1 **2. Partnership Allegations Against Each Defendant**

2 The Court next considers whether the FAC makes sufficient factual
 3 allegations to demonstrate that each individual defendant is a partner of the bZx
 4 DAO general partnership. Because anyone holding a BZRX token is a partner in
 5 the partnership, Plaintiffs can make this showing by specifically alleging that each
 6 Defendant held BZRX tokens.

7 As for Kistner and Bean, the FAC alleges that they co-founded the bZx
 8 Protocol and initially controlled it through bZeroX LLC, which they also
 9 co-founded and controlled. (FAC ¶¶ 22–23, 67). Although the FAC doesn’t
 10 specifically allege that Kistner or Bean held BZRX tokens, it does allege that they
 11 participated in Protocol decision making and that the only way to participate in
 12 such decision making is by holding and voting BZRX tokens. (*Id.* ¶¶ 69, 72–73).
 13 These allegations support the reasonable inference that Kistner and Bean
 14 necessarily held BZRX tokens when they participated in protocol decision
 15 making.⁴ The FAC also alleges that Kistner is still listed as an employee of bZx.
 16 (*Id.* ¶ 67). The Court finds the FAC makes sufficient allegations to permit the
 17 reasonable inference that Kistner and Bean hold BZRX tokens.

18 As for Leveragebox LLC, the FAC alleges that Leveragebox operated the
 19 Fulcrum trading platform when the phishing attack and hack occurred. (*Id.* ¶ 78).
 20 The FAC doesn’t allege that Leveragebox LLC held governance tokens,
 21 participated in the management of the bZx DAO, or shared in the profits of the
 22 DAO. The Court finds the FAC fails to allege that Leveragebox LLC was a general
 23 partner of the bZx DAO.

24 As for bZeroX LLC, the FAC alleges that bZeroX created and controlled the

25
 26 ⁴ In *CFTC v. Ooki DAO*—a case involving the Ooki DAO, which succeeded the
 27 bZx DAO—the Court noted that “the CFTC stated that Tom Bean and Kyle Kistner,
 28 the founders of bZeroX LLC, are [BZRX] Token Holders.” *CFTC v. Ooki DAO*,
 No. 22-CV-5416-WHO, 2022 WL 17822445, at *4 (N.D. Cal. Dec. 20, 2022).

1 protocol until August 2021, at which time bZeroX transferred its assets to the bZx
 2 DAO and dissolved. (*Id.* ¶ 79). At the time of the hack, bZeroX didn't exist as a
 3 legal entity. The FAC doesn't contain any allegations suggesting that bZeroX held
 4 BZRX tokens, participated in the management of the bZx DAO, or shared in the
 5 profits of the DAO. The Court finds the FAC fails to allege that bZeroX was a
 6 general partner of the bZx DAO.

7 As for Hashed International LLC and AGE Crypto GP, LLC, the FAC alleges
 8 both entities were investors in the bZx Protocol and members of the DAO and
 9 general partnership. (*Id.* ¶¶ 22–25). The FAC alleges that Hashed has "publicly
 10 disclosed that it 'supported the [bZx] team' . . . and invested in the protocol and the
 11 BZRX token." (*Id.* ¶ 74). The FAC doesn't explicitly allege that AGE held
 12 governance tokens, but does allege that both entities participated in protocol
 13 decision making. (*Id.* ¶¶ 74–75). As previously discussed, these allegations
 14 support the reasonable inference that Hashed and AGE necessarily held BZRX
 15 tokens when they allegedly participated in protocol decision making. The Court
 16 finds Plaintiffs' allegations sufficient to permit the reasonable inference that
 17 Hashed and AGE hold governance tokens.

18 * * *

19 The motion to dismiss for failing to allege facts sufficient to demonstrate the
 20 existence of a general partnership is **GRANTED IN PART** and **DENIED IN PART**,
 21 and the claims against Leveragebox LLC and bZeroX LLC are **DISMISSED**.

22 **D. Corporate Veil Piercing**

23 Bean and Kistner argue that Plaintiffs plead no facts that warrant piercing
 24 the corporate veil of the Leveragebox and bZeroX LLCs. (Dkt. 27-1 at 8–9).
 25 However, the FAC alleges Bean and Kistner are liable as partners of the bZx DAO
 26 general partnership, not as members of their LLCs. (FAC ¶¶ 22–23, 72–73).
 27 Therefore, the Court **DENIES** Bean and Kistner's motion to dismiss to the extent
 28 it argues Bean and Kistner are shielded from liability by their LLCs.

1 **E. Terms of Use**

2 The Leveragebox Defendants argue Plaintiffs' negligence claim is barred by
 3 the Terms of Use they agreed to when they accessed the Protocol via the Fulcrum
 4 website. (Dkt. 27-1 at 9–10). "Contracts formed on the Internet come primarily in
 5 two flavors: 'clickwrap' (or 'click-through') agreements, in which website users are
 6 required to click on an 'I agree' box after being presented with a list of terms and
 7 conditions of use; and 'browsewrap' agreements, where a website's terms and
 8 conditions of use are generally posted on the website via a hyperlink at the bottom
 9 of the screen." *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175–76 (9th Cir.
 10 2014). Fulcrum's Terms of Use were hyperlinked on the bottom of the Fulcrum
 11 homepage and users weren't required to click "I agree" before accessing the
 12 platform. (Dkt. 27-1 at 9; Dkt. 27-2 Ex. 2). Therefore, Fulcrum's Terms of Use are
 13 a "browsewrap" agreement.

14 Under California law, browsewrap agreements are binding on a website
 15 user only when the user has "actual or constructive knowledge of a website's
 16 terms and conditions." *Long v. Provide Com., Inc.*, 245 Cal. App. 855, 863 (2016)
 17 (quoting *Nguyen*, 763 F.3d at 1176), see, e.g., *Cairo, Inc. v. Crossmedia Servs., Inc.*,
 18 No. 04-cv-4825, 2005 WL 756610, at *5 (N.D. Cal. Apr. 1, 2005) (finding
 19 website's browsewrap terms of use were binding on plaintiff when he admitted he
 20 had actual knowledge of the terms). "[W]here a website makes its terms of use
 21 available via a conspicuous hyperlink on every page of the website but otherwise
 22 provides no notice to users nor prompts them to take any affirmative action to
 23 demonstrate assent, even close proximity of the hyperlink to relevant buttons
 24 users must click on—without more—is insufficient to give rise to constructive
 25 notice." *Nguyen*, 763 F.3d at 1179–80; see also *Long*, 245 Cal. App. at 864–67
 26 (adopting *Nguyen*'s reasoning).

27 Here, a hyperlink to the Terms of Use is located at the bottom of Fulcrum's
 28 homepage and appear to be visible only if a user scrolls through other material,

1 including the “Start Now” buttons used to access the platform’s trading and lending
 2 features. (See Dkt. 27-2 Ex. 2 at 21–23). Additionally, the Terms of Use are
 3 displayed in small font located below at least eighteen other hyperlinks. (*Id.* at
 4 22–23). The FAC contains no allegations suggesting that Plaintiffs had actual
 5 knowledge of the Terms of Use when they accessed the Protocol. The Court finds
 6 Plaintiffs had neither actual nor constructive notice of the Terms of Use and,
 7 therefore, aren’t bound by them. The Court further finds that the Terms of Use
 8 don’t bar Plaintiffs’ claim against any of the Leveragebox Defendants. The
 9 Leveragebox Defendant’s motion to dismiss is **DENIED** to the extent it seeks to
 10 dismiss Plaintiffs’ claims based on Leveragebox’s Terms of Use.

11 III. RULE 12(b)(2) MOTION TO DISMISS

12 The Leveragebox Defendants move to dismiss all claims against Bean,
 13 arguing the Court lacks personal jurisdiction over him. (Dkt. 27-1 at 24–25).
 14 Although the motion to dismiss doesn’t invoke Rule 12(b)(2), the Court will
 15 construe it as 12(b)(2) motion to dismiss for lack of personal jurisdiction.

16 A. Legal Standard

17 Rule 12(b)(2) governs motions to dismiss for lack of personal jurisdiction.
 18 See Fed. R. Civ. P. 12(b)(2). The plaintiff must establish that the court has
 19 personal jurisdiction over the defendant by “mak[ing] only a prima facie showing
 20 of jurisdictional facts to withstand the motion to dismiss.” *Love v. Assoc’d.
 21 Newspapers, Ltd.*, 611 F.3d 601, 608 (9th Cir. 2010); see also *Pebble Beach Co.
 22 v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). To make this showing, “the plaintiff
 23 need only demonstrate facts that if true would support jurisdiction over the
 24 defendant.” *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995).
 25 “Uncontroverted allegations in the complaint must be taken as true, and conflicts
 26 over statements contained in affidavits must be resolved in [plaintiffs’] favor.”
 27 *Love*, 611 F.3d at 608.

28 “Federal courts ordinarily follow state law in determining the bounds of their

jurisdiction over persons.” *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (citing Fed. R. Civ. P. 4(k)(1)(A)). “California’s long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution,” the inquiry centers on whether exercising jurisdiction over a particular defendant comports with due process. *Id.*; see also Cal. Civ. Proc. Code § 410.10 (“A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.”). “Due process requires that the defendant ‘have certain minimum contacts’ with the forum state ‘such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

Federal courts may exercise either general or specific jurisdiction over nonresident defendants. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). General jurisdiction exists when a defendant has “substantial” or “continuous and systematic” contacts with the forum state. *Id.* at 415. If a defendant’s contacts are insufficient to establish general jurisdiction, specific jurisdiction might still exist. A three-part test determines whether a non-resident defendant has sufficient contacts to be subject to specific jurisdiction:

(1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;

(2) the claim must be one which arises out of or relates to the defendant’s forum-related activities; and

(3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Picot, 780 F.3d at 1211 (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (2004)). The plaintiff must prove the first two prongs,

1 CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1076 (9th Cir. 2011),
 2 then the burden shifts to the defendant to “set forth a ‘compelling case’ that the
 3 exercise of jurisdiction would not be reasonable,” *id.* (quoting *Burger King Corp.*
 4 v. *Rudzewicz*, 471 U.S. 462, 477 (1985)). “For claims sounding in tort, [the Ninth
 5 Circuit] appl[ies] a ‘purposeful direction’ test and look[s] to evidence that the
 6 defendant has directed his actions at the forum state, even if those actions took
 7 place elsewhere.” *Picot*, 780 F.3d at 1212.

8 **B. Specific Personal Jurisdiction over Bean**

9 The FAC alleges that the Court has specific personal jurisdiction over all
 10 Defendants because they purposefully entered the general partnership which:
 11 was controlled from California; has at least one member conducting partnership
 12 business in California; and directed at least some activities at California. (FAC
 13 ¶ 33). Specifically, the FAC alleges that the Court has specific personal jurisdiction
 14 over Bean only because he is a general partner in the bZx DAO general
 15 partnership. (*Id.*). However, “[l]iability and jurisdiction are independent. Liability
 16 depends on the relationship between the plaintiff and the defendants and between
 17 the individual defendants; jurisdiction depends only upon each defendant’s
 18 relationship with the forum.” *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990).
 19 “Jurisdiction over a partnership does not necessarily permit a court to assume
 20 jurisdiction over the individual partners,” and “California court[s] ‘ha[ve] jurisdiction
 21 over only those individual partners who personally established the requisite
 22 minimum contacts with California.’” *Goehring v. Superior Ct. of San Diego Cnty.*,
 23 62 Cal. App. 4th 894, 904–05 (1998); *see also Sher*, 911 F.2d at 1366 (“[A]
 24 partner’s actions may be imputed to the partnership for the purpose of establishing
 25 minimum contacts, but ordinarily may not be imputed to the other partners.”).

26 Bean argues the Court lacks personal jurisdiction over him because the FAC
 27 fails to plausibly allege that he was a member of a general partnership controlled
 28 from California. (Dkt. 27-1 at 24–25). Even if he were a general partner, Bean

1 contends he lacks sufficient minimum contacts with California to establish specific
 2 personal jurisdiction. (Dkt. 43 at 9–10). Although the Court has found that Plaintiffs
 3 sufficiently allege Bean is a partner of the bZx DAO general partnership, Plaintiffs
 4 only allege that Bean “was aware that Kistner moved to California and intentionally
 5 communicated with Kistner in California about partnership business.” (FAC ¶ 73).
 6 That fact alone is insufficient to make a *prima facie* showing of personal
 7 jurisdiction over Bean. See, e.g., *Sher*, 911 F.2d at 1366 (finding a law firm partner
 8 who represented a California resident, made phone calls and sent letters to
 9 California in the course of representation, and travelled to California on several
 10 occasions to service the client didn’t have the requisite minimum contacts to
 11 establish purposeful availment); see also *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*,
 12 557 F.2d 1280, 1285 (9th Cir. 1977). The Court finds it lacks specific personal
 13 jurisdiction over Bean. The Court **GRANTS** Bean’s motion to dismiss for lack of
 14 personal jurisdiction, and the claim against him is **DISMISSED WITH LEAVE TO**
 15 **AMEND** to add additional facts demonstrating the requisite minimum contacts.

16 IV. RULE 12(f) MOTION TO STRIKE

17 The Leveragebox Defendants next move to strike the FAC’s class
 18 allegations pursuant to Rule 12(f). (Dkt. 27-1 at 23–24). They argue the Court
 19 should strike the class allegations because the named Plaintiffs aren’t “adequate”
 20 class representatives under Rule 23. (*Id.*). Rule 23(a)(4) requires that class
 21 representatives “fairly and adequately protect the interests of the class.” Fed. R.
 22 Civ. P. 23(a)(4). The adequacy inquiry “serves to uncover conflicts of interest
 23 between named parties and the class they seek to represent.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997) (citing *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157–58 & n.13 (1982)). “[A] class representative must be
 24 part of the class and ‘possess the same interest and suffer the same injury’ as the
 25 class members.” *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403
 26 (1977) (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208,
 27

1 216 (1974)). “To assure ‘adequate’ representation, the class representative’s
 2 personal claim must not be inconsistent with the claims of other members of the
 3 class.” *In re Beer Distrib. Antitrust Litig.*, 188 F.R.D. 549, 554 (N.D. Cal. 1998).
 4 “Where the complaint demonstrates that a class action cannot be maintained on
 5 the facts alleged, a defendant may move to strike class allegations prior to
 6 discovery.” *Sanders v. Apple Inc.*, 672 F. Supp. 2d 978, 990 (N.D. Cal. 2009).

7 Here, the putative class includes “[a]ll people who delivered cryptocurrency
 8 tokens to the bZx protocol and had any amount of funds stolen in the theft reported
 9 on November 5, 2021, except for people whose only cryptocurrency stolen was
 10 the BZRX token.” (FAC ¶ 80). The FAC also provides that “[n]one of the Plaintiffs
 11 or proposed class held meaningful stakes of BZRX token.” (*Id.* ¶ 64). The
 12 Leveragebox Defendants contend this allegation is essentially an admission the
 13 class representatives held some BZRX tokens, (Dkt. 43 at 10), and are therefore
 14 general partners of the bZx DAO and “equally liable under Plaintiffs’ own general
 15 partnership theory,” (*id.* at 23–24).

16 While the Leveragebox Defendants are correct that, under Plaintiffs’ general
 17 partnership theory, anyone holding BZRX tokens at the relevant time is jointly and
 18 severally liable for the torts of the DAO, the FAC doesn’t clearly demonstrate a
 19 conflict of interest between the named Plaintiffs and the putative class.
 20 Specifically, the allegation that “[n]one of the Plaintiffs or proposed class held
 21 meaningful stakes of BZRX token,” (*id.* ¶ 64), doesn’t clearly demonstrate that the
 22 named Plaintiffs *necessarily* held BZRX tokens. This allegation can also be
 23 interpreted to mean the named Plaintiffs held no BZRX tokens. Accordingly, the
 24 Court finds the FAC doesn’t demonstrate an irreconcilable conflict of interest
 25 between the named Plaintiffs and the putative class.

26 The motion to strike the class allegations is **DENIED WITHOUT**
 27 **PREJUDICE**. If discovery reveals actual conflicts of interest between the named
 28 Plaintiffs and the putative class, Defendants can renew their motion to strike at

1 that time. Additionally, Plaintiffs can opt to revise the class definition when filing
 2 their Second Amended Complaint to attempt to correct any potential Rule 23(a)(4)
 3 problems. See *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1238 (9th Cir.
 4 2001) (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 408 (1980)) ("The
 5 district court is not 'to bear the burden of constructing subclasses' or otherwise
 6 correcting Rule 23(a) problems; rather, the burden is on Plaintiffs to submit
 7 proposals to the court."); see also *Andrews Farms v. Calcot, Ltd.*, 268 F.R.D. 380,
 8 388–89 (E.D. Cal. 2010) (collecting cases).

9 V. RULE 12(b)(4) MOTION TO DISMISS

10 The Hashed Defendants move to dismiss the entire action because the FAC
 11 incorrectly names Hashed and AGE as defendants when they didn't hold BZRX
 12 tokens. (Dkt. 31-1 at 6). Specifically, they move to dismiss for insufficient process
 13 under Rule 12(b)(4) and contend Plaintiffs violated Rule 11 because a reasonable
 14 inquiry would have revealed Hashed and AGE weren't tokenholders.⁵ (*Id.*).

15 A Rule 12(b)(4) motion to dismiss is technically "proper only to challenge
 16 noncompliance with the provisions of Rule 4(b) or any applicable provision
 17 incorporated by Rule 4(b) that deals specifically with the content of the summons."
 18 5B Wright & Miller, *Federal Practice and Procedure* § 1353 (3d ed. 2022).
 19 Rule 4(a)(1)(A) and (B) require that a summons must include the correct names
 20

21 ⁵ It appears the Hashed Defendants' Rule 11 motion didn't conform with that
 22 Rule's procedural requirements. Specifically, Plaintiffs contend the Hashed
 23 Defendants didn't provide the 21 day period to correct or withdraw the challenged
 24 paper. (See Dkt. 38 at 7–8); Fed. R. Civ. P. 11(c)(2). And the Rule 11 motion
 25 wasn't made separately from all other motions. (See Dkt. 31-1); Fed. R. Civ. P.
 26 11(c)(2). Additionally, the Hashed Defendants now appear to abandon their
 27 motion. (Dkt. 42 at 4 ("Age and Hashed intend to move for Rule 11 sanctions
 28 because of the frivolous factual and legal basis for which the lawsuit was filed
 against Age and Hashed including plaintiffs' persistent refusal to cure the party
 defects.")). The Hashed Defendants' motion to dismiss is **DENIED WITHOUT
 PREJUDICE** to the extent it relies on Rule 11.

1 of the parties and be directed at the correct defendant. Fed. R. Civ. P. 4(a)(1)(A),
 2 (B). If a summons doesn't include the correct information, dismissal is proper
 3 under Rule 12(b)(4). See *J.L. v. Best W. Int'l, Inc.*, 521 F. Supp. 3d 1048, 1073
 4 (D. Colo. 2021). When a defendant asserts the plaintiff named the wrong party,
 5 dismissal under Rule 12(b)(4) is inappropriate if the plaintiff subsequently states
 6 they named the defendant they intended to. See, e.g., *id.* at 1074 (denying Rule
 7 12(b)(4) motion to dismiss and rejecting defendant entity's argument that plaintiff
 8 should have sued a subsidiary when plaintiff stated they intended to name the
 9 defendant entity and not the subsidiary).

10 The Hashed Defendants don't challenge the form of process, the content of
 11 the summons, or the manner in which service of process was delivered. (See
 12 Dkt. 7 (service on AGE); Dkt. 8 (service on Hashed). Nor do they challenge that
 13 Plaintiffs intended to sue Hashed and AGE. Instead, Hashed and AGE assert they
 14 never held BZRX tokens. Specifically, Hashed asserts an unidentified South
 15 Korean natural citizen invested in the tokens, (Dkt. 31-1 at 3), and AGE asserts it
 16 entered a Simple Agreement For Future Tokens, but doesn't state whether it ever
 17 received BZRX tokens, (*id.*). Beyond these assertions, the Hashed Defendants
 18 don't provide any evidence supporting their assertion that they didn't hold BZRX
 19 tokens. In contrast, the FAC alleges Hashed and AGE were investors in the bZx
 20 Protocol and participated in protocol decision making, allowing the reasonable
 21 inference they possessed BZRX tokens. (FAC ¶¶ 22–23, 74–75).

22 At the motion to dismiss stage, the Court is bound by the allegations in the
 23 FAC. *al-Kidd*, 580 F.3d at 956. The Hashed Defendants can't defeat those
 24 allegations by simply asserting conflicting facts without supporting evidence or
 25 affidavits. The Hashed Defendants' motion to dismiss under 12(b)(4) is **DENIED**.

26 The question of whether the Hashed Defendants held tokens will likely be
 27 resolved by discovery. However, if Hashed and AGE didn't hold BZRX tokens and
 28 are in fact erroneous defendants, the Court might lack jurisdiction over them. See

1 *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688
 2 (9th Cir. 1988) (quoting *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir.1986))
 3 (“[W]ithout substantial compliance with Rule 4 ‘neither actual notice nor simply
 4 naming the defendant in the complaint will provide personal jurisdiction.’”); Fed.
 5 R. Civ. P. 4(a) (a summons must name the correct defendant). When parties
 6 dispute facts bearing on jurisdiction, a court may allow limited jurisdictional
 7 discovery to resolve the dispute. See *LNS Enterprises LLC v. Cont’l Motors, Inc.*,
 8 22 F.4th 852, 864 (9th Cir. 2022) (quoting *Laub v. U.S. Dep’t of Interior*, 342 F.3d
 9 1080, 1093 (9th Cir. 2003)) (“Jurisdictional discovery ‘should ordinarily be granted
 10 where pertinent facts bearing on the question of jurisdiction are controverted or
 11 where a more satisfactory showing of the facts is necessary.’”). Therefore, the
 12 Court will permit either party to file a motion requesting limited jurisdictional
 13 discovery to determine whether Hashed and AGE actually held BZR tokens.

14 **VI. RULE 12(b)(1) MOTION TO DISMISS**

15 The Hashed Defendants move to dismiss the claims against them because
 16 Plaintiffs lack of Article III standing. (Dkt. 31-1 at 6–7). A motion to dismiss for lack
 17 of standing is “properly raised in a Rule 12(b)(1) motion to dismiss.” *Chandler v.*
 18 *State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010) (“[S]tanding
 19 . . . pertain[s] to federal courts’ subject matter jurisdiction.”). Although the Hashed
 20 Defendants don’t invoke Rule 12(b)(1), the Court will construe this argument as a
 21 motion to dismiss for lack of subject matter jurisdiction.

22 To establish standing, a plaintiff must show: (1) injury in fact, (2) causation,
 23 and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61
 24 (1992). The Hashed Defendants challenge only causation, arguing that the FAC
 25 doesn’t plead a causal nexus between their alleged conduct and Plaintiffs’ injury.
 26 (Dkt. 31-1 at 7). To satisfy the causation prong of the standing inquiry, a plaintiff
 27 must demonstrate that their injury is fairly traceable to the defendant. *Simon v. E.*
 28 *Ky. Welfare Rts. Org.*, 426 U.S. 41–42 (1976).

1 Here, the FAC alleges Plaintiffs were injured due to the negligence of the
2 bZx DAO general partnership. (FAC ¶¶ 99–101). As previously discussed, the
3 FAC's allegations support the reasonable inference that the Hashed Defendants
4 held BZRX tokens and were therefore members of the general partnership. Under
5 California partnership law, “all partners are jointly and severally liable for
6 partnership obligations.” *Myrick v. Mastagni*, 185 Cal. App. 4th 1082, 1091 (2010);
7 *see also* Cal. Corp. Code § 16306(a) (“[A]ll partners are liable jointly and severally
8 for all obligations of the partnership unless otherwise agreed by the claimant or
9 provided by law.”); § 16307(b) (“[A]n action may be brought against the
10 partnership and any or all of the partners in the same action or in separate
11 actions.”).

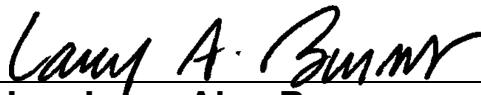
12 The Court finds that Plaintiffs' injury is fairly traceable to the bXz DAO
13 general partnership and that they have standing to sue the alleged general
14 partners Hashed and AGE. The Hashed Defendants' motion to dismiss for lack of
15 standing is **DENIED**.

16 **VII. CONCLUSION**

17 For the forgoing reasons, the Court **GRANTS IN PART** and **DENIES IN**
18 **PART** the Leveragebox Motion, (Dkt. 27), and **DENIES WITHOUT PREJUDICE**
19 the Hashed Motion, (Dkt. 31). The claims against Tom Bean, bZeroX LLC, and
20 Leveragebox LLC are **DISMISSED WITHOUT PREJUDICE**. To the extent
21 Plaintiffs wish to amend their claims, they may do so by filing a Second Amended
22 Complaint by **April 10, 2023**, in accordance with the Southern District's Civil Local
23 Rules and this Court's Civil Standing Order.

24 **IT IS SO ORDERED.**

25 Dated: March 27, 2023

26 
27 **Hon. Larry Alan Burns**
28 United States District Judge